

To: **Ex. 6 - Personal Privacy** [ed.levine@NOAA.gov[ed.levine@NOAA.gov]; frank.csulak@noaa.gov[frank.csulak@noaa.gov]; lindy\_nelson@ios.doi.gov[lindy\_nelson@ios.doi.gov]; **Ex. 4 - CBI**]; Jarvela, Steve[Jarvela.Stephen@epa.gov]; Marzulli, Linda[Marzulli.Linda@epa.gov]; 'Ormes, David'[David.T.Ormes@uscg.mil]; Fetzer, Richard[Fetzer.Richard@epa.gov]; 'Alan Williams'[awilliams@mde.state.md.us]; 'Ben Anderson'[bennett.anderson@state.de.us]; 'Dorsey, Mike H'[Mike.H.Dorsey@wv.gov]; 'Ellen Malenfant'[ellen.Malenfant@state.de.us]; 'Gregory Britt'[gregory.britt@vdm.virginia.gov]; 'John F Giese'[john.giese@deq.virginia.gov]; 'Kerry Leib'[kleib@state.pa.us]  
From: **Ex. 4 - CBI** office  
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Subject: News for Region 3

A few items of note. I printed the whole blog so you all can see what is going on and forward by our congressional leaders.

**Ex. 4 - CBI**

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This is from a blog, "Chemical Facility Security News" (<http://chemical-facility-security-news.blogspot.com/>). The blogger, Pat Cole always is on top of issues, covering MTSA, emergency response, CFATS, USCG, EPA, etc., etc. He and I have corresponded in the past on various issues. Discussions this past week concerning the WVA chemical spill, he has written a blog below concerning the initial regulatory moves that the RRT/states need to keep our eye on as the legislation develops and rules are promulgated.

## Saturday, January 18, 2014

### Chemical Spill Prevention Legislation

It took over a week for a set of legislators to come up with a knee jerk reaction to the chemical spill and water system closure incident in Charleston, WV. Normally I wait for actual legislation to be published before commenting on it, but because of the publicity already being generated by this bill that can't actually be introduced until the 27<sup>th</sup> I think that it is fair game.

The trio of Senators, Manchin (D,WV), Rockefeller (D,WV) and Boxer (D,CA) have crafted legislation that they claim "will help protect Americans from chemical spills that threaten drinking water". This is certainly a laudable intention and the two West Virginia legislators certainly have a strong political reason for responding to the Freedom spill in

a timely manner.

Their press release indicates that the bill embraces four key principles:

1. Requiring regular state inspections of above-ground chemical storage facilities,
2. Requiring industry to develop state-approved emergency response plans that meet at least minimum guidelines established in this bill,
3. Allowing states to recoup costs incurred from responding to emergencies, and
4. Ensuring drinking water systems have the tools and information to respond to emergencies.

It is hard to argue with these principles as they all appear on their face to be reasonable responses to the latest chemical incident. While the devil is always in the details, and we won't know those for at least a week (unless the Senators are willing to release at least a draft copy of their bill), there are some obvious pitfalls in putting these principles into regulatory practice.

## **State Inspections**

The federal government usually gets into problems when it starts to tell the States what to do. We already have State enforcement of many of the federal chemical safety programs and the drinking water programs managed under the EPA are almost all enforced by State regulators. The reason for this is clear, no one in Congress wants to be responsible for paying for the huge number of inspectors and other regulatory staff that would be responsible for federal oversight of these regulations.

There is much to be said in favor of State enforcement over federal enforcement of environmental regulations. Local conditions will have a huge effect on what is important.

The air pollution controls necessary in an overcrowded and physically confined space like the Los Angeles basin are completely different than those that would apply in Alaska. The surface water protection requirements for Florida will be much more extensive than those in Arizona. And the chemical storage safety requirements will be much more stringent along the Houston ship channel than on a Kansas wheat farm.

But, there is also a completely different political climate in each of the States that will affect how well the State can or will implement chemical safety requirements. One only has to look at the proactive chemical safety program in Contra Costa County, California and compare it to the much more hands-off approach of the Texas state programs. Those local responses are governed by the opinions and political activism of the local population. And that local population, through their elected representative, will govern how much money these various State agencies will be able to spend to implement a chemical safety program.

## **Emergency Response Plans**

I have long advocated more extensive emergency planning requirements for chemical facilities. The current lack of standards ensures that the vast number of existing emergency response plans are inadequate at best, and mostly non-existent. The establishment for standards, provisions for training local planning organizations, and funding for the development and periodic exercising of emergency response plans is an absolute must for the most dangerous chemical storage facilities.

While the owners of chemical storage facilities have a critical part to play in any emergency planning process, they cannot be held responsible for the process. The vast bulk of the response effort in the event of an accidental or deliberate chemical release will fall on State and local response agencies. Those agencies cannot allow local industries to mandate what their actions will be in a chemical release scenario any more than local police departments can allow banks to dictate how they will respond to a bank robbery.

Industry can only (and absolutely should be) held responsible for the on-site response efforts and the prompt complete off-site notification of all chemical incidents that could potentially have consequences beyond the local fence line.

They clearly should have a role in the State and local emergency planning process. Information about the type, quantity and location of potentially hazardous chemicals can only come from facility owner-operators. The facility should also have more expertise in handling and exposure issues related to those chemicals. But, legislators are going to have to be extremely careful about how they establish requirements for the facility support of the emergency planning process. If they get too aggressive, they are going to drive many small businesses out of business.

## **Cost Recovery**

The idea that State and local governments should be able to recover their emergency response costs is certainly a good idea. I'm sure that there are many provisions in current civil law that allow for such recovery actions. The big problem is that the civil actions that result from incidents like the Freedom spill or the West explosion quickly bankrupt small companies that are involved in such incidents. Adding State and local governments to that civil liability chain will only drive companies to bankruptcy faster and ensure that private citizens recover an even smaller part of their just injury compensation.

## **Drinking Water Protection**

We all certainly need to be concerned that drinking water systems have the tools and information necessary to ensure that our drinking water is safe (a topic [I discussed here](#)). Having said that; we need to be extremely careful that we don't try to make the local water treatment facility into something which it is not. There is no way that any water treatment facility is going to be able to afford the equipment and personnel required to be able to remove all potential contaminants from water. Nor is the local water company laboratory going to be able to detect all of the possible contaminants that could be found in the water. The local taxpayers will not, cannot, afford to fund a facility with capabilities of that scope.

The only reasonable way to design a local water treatment facility is to look at the water supply and its normal seasonable variations to determine what contaminants are typically found in that supply. The water treatment methodology must be designed to remove those contaminants down to well understood and quantified safe drinking levels.

Inlet water testing must be able to confirm the variations in the concentration of those normal contaminants that would affect processing conditions. It must also be able to routinely detect the most dangerous chemicals that could possibly be found in the water supply, particularly those that would not be removed to safe levels by the routine water treatment process employed at that facility.

I do believe that a water treatment facility should have test methods available to detect all chemicals routinely stored in bulk upstream (for a reasonable distance) of any surface water intake. There should be periodic water testing done with those methods, mainly to ensure that the laboratory maintains their ability to conduct those tests. In the event of an upstream spill this would allow the facility to begin routine testing to detect the arrival of that material upstream of the intake far enough to allow the facility to take appropriate action before the material gets into the facility.

That would also demand that the facility operators have a clear understanding of what contaminants that their operating system is not capable of removing to safe levels. This also demands that safe levels are known. Any chemical which is not removed by the treatment system, or for which there is no safe level established, should not be allowed to enter the treatment facility.

## **Scope of the Problem**

The one thing that the press release and provided fact sheet clearly do not address is the potential scope of the problem. Depending on how they define chemical storage facilities this could include hundreds of thousands of facilities. The initial CFATS top screen submissions came from over 40,000 facilities that only stored large quantities of a little more than 300 chemicals that might be the target of terrorist attack.

The number of inspectors that is going to be required to visit each and every one of those facilities on a routine basis is going to be huge. It might be large enough to have a noticeable impact on unemployment numbers if there were qualified people available to fill the positions. The funding that is going to be required to staff and support those positions will be enormous.

The amount of time and effort necessary to develop the emergency response plans for all of those facilities is going to task local first response agencies that are already having problems funding actual responders. The Local Emergency Planning Committees are already tasked to complete these efforts but are not funded and are generally ineffective. Adding requirements to their plans by requiring specific drinking water protection plans will not make them more effective.

## **Wait and See**

Again, I haven't seen this proposed bill (and I am not sure that it is yet in its final introduction form), but I would be very surprised if the bill takes into account the limitations that I have discussed above. A rapid political response, such as this bill, to an incident is almost always ineffective at achieving its objectives and always produces unintended consequences.

The chemical industry is certainly going to oppose legislation that expands the scope of current regulations. Having said that though, Lawrence Sloan, the President of SOCMA made a very important point in a blog post on Friday; "What we need is greater accountability and adherence to existing regulations throughout the entire chemical supply chain."

It would be more effective in the long run if legislation waited until the Chemical Safety Board completed their investigation and made their recommendations. But, Senators Manchin and Rockefeller had to have something in hand this week as they head back to West Virginia to talk to voters and supporters.

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**Op-Ed Commentary – Matt Wasson: Who has priority over water? January 18, 2014**

What do last week's Kanawha Valley chemical spill, the Exxon Valdez spill, and the Deepwater Horizon incident have in common? All were man-made environmental disasters, disrupting the lives of thousands of people, and all cracked open for public view astonishing examples of corporate and regulatory dereliction...

<http://www.wvgazette.com/Opinion/OpEdCommentaries/201401170147>

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Debbie Scholz

SEA Consulting Group, Inc.

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Website: [www.seaconsulting.com](http://www.seaconsulting.com)